110TH CONGRESS
1ST SESSION

S. RES. 303

Censuring the President and the Attorney General.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2007

Mr. FEINGOLD (for himself and Mr. HARKIN) submitted the following resolution; which was referred to the Committee on the Judiciary

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RESOLUTION

Censuring the President and the Attorney General.

Resolved,

SECTION 1. BASIS FOR CENSURE.

(a) NATIONAL SECURITY AGENCY WIRETAPPING.—The Senate finds the following:

(1) Congress passed the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and in so doing provided the executive branch with clear authority to wiretap suspected terrorists inside the United States.

(2) Section 201 of the Foreign Intelligence Surveillance Act of 1978 states that it and the criminal wiretap law are the ''exclusive means by which elec-

tronic surveillance'' may be conducted by the United States Government, and section 109 of that Act makes it a crime to wiretap individuals without complying with this statutory authority.

(3) The Foreign Intelligence Surveillance Act of 1978 both permits the Government to initiate wiretapping immediately in emergencies as long as the Government obtains approval from the court established under section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) within 72 hours of initiating the wiretap, and authorizes wiretaps without a court order otherwise required by the Foreign Intelligence Surveillance Act of 1978 for the first 15 days following a declaration of war by Congress.

(4) The Authorization for Use of Military Force that became law on September 18, 2001 (Public Law 107–40; 50 U.S.C. 1541 note), did not grant the President the power to authorize wiretaps of Americans within the United States without obtaining the court orders required by the Foreign Intelligence Surveillance Act of 1978.

(5) The President's inherent constitutional authority does not give him the power to violate the ex-

plicit statutory prohibition on warrantless wiretaps in the Foreign Intelligence Surveillance Act of 1978.

(6) George W. Bush, President of the United States, authorized the National Security Agency to wiretap Americans within the United States without obtaining the court orders required by the Foreign Intelligence Surveillance Act of 1978 for more than 5 years.

(7) Alberto R. Gonzales, as Attorney General of the United States and as Counsel to the President, reviewed and defended the legality of the President's authorization of wiretaps by the National Security Agency of Americans within the United States without the court orders required by the Foreign Intelligence Surveillance Act of 1978.

(8) President George W. Bush repeatedly misled the public prior to the public disclosure of the National Security Agency warrantless surveillance program by indicating his Administration was relying on court orders to wiretap suspected terrorists inside the United States.

(9) Alberto R. Gonzales misled Congress in January 2005 during the hearing on his nomination to be Attorney General of the United States by indicating that a question about whether the President

has the authority to authorize warrantless wiretaps in violation of statutory prohibitions presented a ''hypothetical situation,'' even though he was fully aware that a warrantless wiretapping program had been ongoing for several years.

(10) In statements about the supposed need for the National Security Agency warrantless surveillance program after the public disclosure of the program, President George W. Bush falsely implied that the program was necessary because the executive branch did not otherwise have authority to wiretap suspected terrorists inside the United States.

(11) Attorney General Alberto R. Gonzales, despite his admitted awareness that congressional critics of the program support wiretapping terrorists in accordance with the Foreign Intelligence Surveillance Act of 1978, attempted to create the opposite impression by making public statements such as ''[s]ome people will argue that nothing could justify the Government being able to intercept conversations like the ones the Program targets''.

(12) President George W. Bush inaccurately stated in his January 31, 2006, State of the Union address that ''[p]revious Presidents have used the same constitutional authority I have, and federal

courts have approved the use of that authority.'', even though the Administration has failed to identify a single instance since the Foreign Intelligence Surveillance Act of 1978 became law in which another President has authorized wiretaps inside the United States without complying with the Foreign Intelligence Surveillance Act of 1978, and no Federal court has evaluated whether the President has the inherent authority to authorize wiretaps inside the United States without complying with the Foreign Intelligence Surveillance Act of 1978.

(13) At a Senate Judiciary Committee hearing on February 6, 2006, Attorney General Alberto R. Gonzales defended the President's misleading statements in the January 31, 2006, State of the Union address.

(14) Attorney General Alberto R. Gonzales has misled Congress and the American people repeatedly by stating that there was no serious disagreement among Government officials ''about'' or ''relate[d] to'' the National Security Agency program confirmed by the President.

(15) According to testimony from former Deputy Attorney General James Comey, Alberto R. Gonzales, while serving as Counsel to the President,

participated in a visit to then-Attorney General John Ashcroft in the intensive care unit of the hospital in an attempt to convince Mr. Ashcroft to overturn the decision by Mr. Comey, then serving as Acting Attorney General due to Mr. Ashcroft's illness, not to certify the legality of a classified intelligence program, in what Mr. Comey described as ''an effort to take advantage of a very sick man''.

(b) DETAINEE AND TORTURE POLICY.—The Senate finds the following:

(1) The United States is a party to the Convention Against Torture, the Geneva Conventions, and the International Covenant on Civil and Political Rights.

(2) Common Article 3 of the Geneva Conventions requires that detainees in armed conflicts other than those between nations ''shall in all circumstances be treated humanely,'' and the Third Geneva Convention on the Treatment of Prisoners of War provides additional protections for detainees who qualify as ''prisoners of war''.

(3) United States law criminalizes any ''act specifically intended to inflict severe physical or mental pain or suffering'' under sections 2340 and 2340A of title 18, United States Code, and the War Crimes

Act (18 U.S.C. 2441) and recognizes the gravity of such offenses by further providing for civil liability under the Torture Victim Protection Act and the Alien Tort Claims Act.

(4) In a draft memorandum dated January 25, 2002, Alberto R. Gonzales, in his capacity as Counsel to the President, argued that the protections of the Third Geneva Convention should not be afforded to Taliban and al Qaeda detainees, and described provisions of the Convention as ''quaint'' and ''obsolete''.

(5) The January 25, 2002, memorandum by then-Counsel to the President Alberto R. Gonzales cited ''reduc[ing] the threat of domestic criminal prosecution'' as a ''positive'' consequence of disavowing the Geneva Conventions' applicability, asserting that such a disavowal ''would provide a solid defense to any future prosecution'' in the event a prosecutor brought charges under the domestic War Crimes Act.

(6) Secretary of State Colin Powell responded in a January 26, 2002, memorandum that such an attempt to evade the Geneva Conventions would ''reverse over a century of U.S. policy and practice in

supporting the Geneva Conventions and undermine the protections of the rule of law for our troops''.

(7) Despite the warnings of the Secretary of State and in contravention of the language of the Third Geneva Convention, President George W. Bush announced on February 7, 2002, that—

(A) he did not consider the Convention to apply to al Qaeda fighters; and

(B) Taliban detainees would not be entitled to ''prisoner of war'' status under the Convention, despite the fact that Article 5 of the Convention and United States Army regulations expressly require such determinations to be made by a ''competent tribunal''.

(8) The Supreme Court, in Hamdan v. Rumsfeld, confirmed that Common Article 3 of the Geneva Conventions applies to Taliban forces and al Qaeda forces, and characterized a central legal premise by which the President sought to avoid the obligations of international law as ''erroneous''.

(9) Alberto R. Gonzales, acting as Counsel to the President, solicited and accepted the August 1, 2002, Office of Legal Counsel memorandum entitled ''Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A'', which took the untenable

position that ''mere infliction of pain'' is not ''torture'' unless ''the victim . . . experiences intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.''.

(10) According to the ''Review of Department of Defense Detention Operations and Detainee Interrogation Techniques'' (the ''Church Report''), issued on March 7, 2005, then-Secretary of Defense Donald Rumsfeld on December 2, 2002, authorized the use on Guantanamo Bay detainees of harsh interrogation techniques not listed in the Army Field Manual, including stress positions, hooding, the use of military dogs to exploit phobias, prolonged isolation, sensory deprivation, and forcing Muslim men to shave their beards.

(11) According to the ''Article 15–6 Investigation of CJSOTF–AP [Combined Joint Special Operations Task Force-Arabian Peninsula] and 5th SF [Special Forces] Group Detention Operation (Formica Report)'' and Department of Defense documents released under the Freedom of Information Act, Guantanamo Bay detainees were chained to the

floor, subjected to loud music, fed only bread and water, and kept for some period of time in cells measuring 4 feet by 4 feet by 20 inches.

(12) The March 2004 investigative report of Major General Antonio Taguba documented ''sadistic, blatant and wanton criminal abuses'' against detainees at the Abu Ghraib detention facility, including sexual and physical abuse, the threat of torture, the forcing of detainees to perform degrading acts designed to assault their religious identity, and the use of dogs to frighten detainees.

(13) According to Department of Defense documents released under the Freedom of Information Act, the United States Armed Forces held certain Iraqis as ''ghost detainees,'' who were ''not accounted for'' and were hidden from the observation of the International Committee of the Red Cross (ICRC).

(14) Military autopsy reports and death certificates released pursuant to the Freedom of Information Act revealed that at least 39 deaths, and probably more, have occurred among detainees in United States custody overseas, approximately half of which were homicides and 7 of which appear to have been

caused by ''strangulation,'' ''asphyxiation'' or fatal ''blunt force injuries''.

(15) On September 6, 2006, President George W. Bush stated that he had authorized the incommunicado detention of certain suspected terrorist leaders and operatives at secret sites outside the United States under a ''separate program'' operated by the Central Intelligence Agency.

(16) President George W. Bush has authorized the indefinite detention, without charge or trial, of more than 700 individuals at Guantanamo Bay Naval Base on the ground that they are ''enemy combatants'' and therefore may be held until the cessation of hostilities under the laws of war.

(17) Department of Justice lawyers, representing President George W. Bush and the Department of Defense in a Federal lawsuit brought on behalf of Guantanamo detainees, took the unprecedented position that the term ''enemy combatant'' could in theory justify the indefinite detention of a ''little old lady in Switzerland who writes checks to what she thinks is [a] charity that helps orphans in Afghanistan but is really a front to finance al-Qaeda activities'' and ''a person who teaches English to the son of an al Qaeda member''.

(18) After the Supreme Court in Hamdi v. Rumsfeld and Rasul v. Bush rejected the claim that an alleged ''enemy combatant'' could be detained indefinitely without any meaningful opportunity to challenge the designation, the Deputy Secretary of Defense issued an order on July 7, 2004, creating ''Combatant Status Review Tribunals'' (CSRTs) for the stated purpose of ''review[ing] the detainee's status as an enemy combatant''.

(19) Such Order—

(A) did not allow detainees to be represented by counsel in Combatant Status Review Tribunal proceedings, but instead specified that a ''military officer'' would be assigned to ''assist[ ]'' each detainee and required such military officers to inform the detainees that ''I am neither a lawyer nor your advocate,'' and that ''[n]one of the information you provide me shall be held in confidence'';

(B) allowed the detainee to be excluded from attendance during review proceedings involving ''testimony or other matters that would compromise national security if held in the presence of the detainee'';

(C) allowed the decision-maker to rely on hearsay evidence and specified that ''[t]he Tribunal is not bound by the rules of evidence such as would apply in a court of law''; and

(D) specified that ''there shall be a rebuttable presumption in favor of the Government's evidence''.

(20) The Government has relied on the above procedures to deprive individuals of their liberty for an indefinite period of time without a meaningful opportunity to confront and rebut the evidence on which that detention is predicated.

(21) President George W. Bush and the Department of Defense designated at least 2 United States citizens as ''enemy combatants,'' claimed the right to detain them indefinitely on United States soil without charge and without access to counsel, and argued that allowing meaningful judicial review of their detention would be ''constitutionally intolerable''.

(22) The Supreme Court established in Hamdi v. Rumsfeld that meaningful review by a neutral decisionmaker of the detention of United States citizens is constitutionally required, that ''the risk of an erroneous deprivation of a citizen's liberty . . . is very

real,'' and that the Constitution mandates that a United States citizen be given a fair opportunity to rebut the Government's ''enemy combatant'' designation.

(23) The administration, having consistently claimed that according United States citizens designated as ''enemy combatants'' the due process protections accorded to criminal defendants in civilian courts would jeopardize national security interests of the utmost importance, elected to pursue criminal charges against alleged ''enemy combatant'' Jose Padilla in a civilian court after holding him in military custody for 3 years.

(24) The administration, having contended that alleged ''enemy combatant'' and United States citizen Yaser Esam Hamdi was so dangerous that merely allowing him to meet with counsel ''jeopardizes compelling national security interests'' because he might ''pass concealed messages through unwitting intermediaries,'' released Mr. Hamdi from custody after 3 years and allowed him to return to Saudi Arabia.

(25) President George W. Bush issued ''Military Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War

Against Terrorism,'' which authorized the creation of military tribunals to try suspected al Qaeda members and other international terrorist suspects for violations of the law of war.

(26) Alberto R. Gonzales, as Counsel to the President, in a November 30, 2001, newspaper editorial, defended these military tribunals and misleadingly represented that they would have adequate procedural safeguards, by stating: ''Everyone tried before a military commission will know the charges against him, be represented by qualified counsel and be allowed to present a defense.''.

(27) The military tribunals' procedural rules as outlined in Military Commission Order No. 1, issued on March 21, 2002, and as subsequently amended—

(A) permitted the accused and his civilian counsel to be excluded from any part of the proceeding that the presiding officer decided to close, and never learn what was presented during that portion of the proceeding;

(B) permitted the introduction of any evidence that the presiding officer determined would have probative value to a reasonable person, thereby permitting the admission of hear-

say and evidence obtained through undue coercion; and

(C) restricted appellate review of the commissions to a panel appointed by the Secretary of Defense, followed by review by the Secretary of Defense and a final decision by the President, with no provision for direct appeal to the Federal courts for review by civilian judges.

(28) Nearly 5 years after the military order was signed, the Supreme Court in Hamdan v. Rumsfeld struck down the military commissions as unlawful, finding that—

(A) the military commissions as constituted were not expressly authorized by any congressional act, including the Authorization for Use of Military Force, the Uniform Code of Military Justice (UCMJ), and the Detainee Treatment Act;

(B) the military commission procedures violated the UCMJ, which mandates that rules governing military commissions be as similar to those governing courts-martial ''as practicable,'' and which affords the accused the right to be present;

(C) the military commission procedures violated Common Article 3 of the Geneva Conventions, which is part of the ''law of war'' under UCMJ Article 21 and requires trial in ''a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples''.

(29) President George W. Bush sought to prevent the Guantanamo detainees from obtaining judicial review of their indefinite confinement by claiming that the writ of habeas corpus was categorically unavailable to non-citizens held at Guantanamo Bay.

(30) The Supreme Court in Rasul v. Bush squarely rejected this claim, holding that the legal precedent on which the President relied ''plainly does not preclude the exercise of [statutory habeas] jurisdiction'' over the detainees' claims, and that the general presumption against extraterritorial application of a statute, cited by the President, ''certainly has no application'' with respect to detainees at Guantanamo Bay where the United States exercises ''complete jurisdiction and control''.

(c) UNITED STATES ATTORNEY FIRINGS AND EXECUTIVE PRIVILEGE.—The Senate finds the following:

(1) At least 9 United States Attorneys were told in 2006 that they must step down under the authority of President George W. Bush, who had the final decision-making power in terminating the employment of United States Attorneys.

(2) Attorney General Alberto R. Gonzales and subordinates under his supervision repeatedly misled Congress and attempted to block legitimate congressional oversight efforts concerning the firing of at least nine United States Attorneys.

(3) Attorney General Alberto R. Gonzales repeatedly obscured the true scope of the firings, originally declining to cite a specific number of individuals fired in his testimony on January 18, 2007, acknowledging only seven in his USA Today op-ed published on March 6, 2007, acknowledging eight firings in his testimony on April 19, 2007, tacitly conceding there had been nine individuals fired in his testimony on May 10, 2007, and testifying on July 24, 2007, that ''there may have been others'' but he did not know the exact number.

(4) Attorney General Alberto R. Gonzales initially characterized the firings as ''an overblown personnel matter,'' claiming that the United States Attorneys had lost his confidence and were fired for

''performance reasons'' when many of those same individuals had received only the highest performance reviews prior to their dismissal.

(5) Attorney General Alberto R. Gonzales testified before the Senate on January 18, 2007, that he would ''never, ever make a change in a United States attorney for political reasons,'' but in later testimony on April 19, 2007, and July 24, 2007, admitted that he does not know who selected each individual United States Attorney for firing or why they were included on the list of United States Attorneys to be fired.

(6) Prior to their selection for firing, both former New Mexico United States Attorney David Iglesias and former Washington United States Attorney John McKay received inappropriate phone calls from Members of Congress or their staffs regarding ongoing, politically sensitive investigations and the White House received complaints about the manner in which they were conducting those investigations.

(7) Attorney General Alberto R. Gonzales testified before the Senate on January 18, 2007, that he would not fire a United States Attorney ''if it would in any way jeopardize an ongoing serious investiga-

tion,'' but later testified, as did his subordinates, that concerns about whether ongoing investigations would be jeopardized were not explored prior to the firings and were specifically ignored when some fired United States Attorneys asked for a delay in their departure dates to allow them to wrap up ongoing investigations.

(8) Attorney General Alberto R. Gonzales publicly stated on March 13, 2007, that he was ''not involved in seeing any memos, was not involved in any discussions about what was going on'' regarding the process leading up to the firing of the United States Attorneys, but later testimony from his subordinates and documents released by the Department of Justice indicate that the Attorney General was, in fact, regularly briefed on the process and did receive at least one memo in November 2005 regarding the planned firings.

(9) Attorney General Alberto R. Gonzales publicly stated on May 15, 2007, that Deputy Attorney General Paul McNulty's participation in the firing of the United States Attorneys was of central importance to the validity of the process and to the Attorney General's decision to fire the specific individuals, but he had previously testified on April 19, 2007,

that he did not discuss the process with Mr. McNulty prior to firing the United States Attorneys, and that ''looking back . . . I would have had the deputy attorney general more involved, directly involved''.

(10) Attorney General Alberto R. Gonzales testified on May 10, 2007, that, after the start of the congressional investigation into the firings, he had refrained from discussing the firings with anyone involved because he did not want to interfere with the ongoing investigations, but former White House Liaison for the Department of Justice, Monica Goodling, testified on May 23, 2007, that the Attorney General spoke with her in late March of 2007 and ''laid out . . . his general recollection . . . of some of the process regarding the replacement of the United States Attorneys.''

(11) Former White House Liaison for the Department of Justice, Monica Goodling, also testified on May 23, 2007, that she did not respond to what Attorney General Alberto R. Gonzales said about his recollection because ''I did not know if it was appropriate for us to both be discussing our recollections of what had happened, and I just thought maybe we shouldn't have that conversation.''

(12) President George W. Bush has consistently stonewalled congressional attempts at oversight by refusing to turn over White House documents relating to the firing of at least 9 United States Attorneys and refusing to allow current or former White House officials to testify before Congress on this matter, based on an excessively broad and legally insufficient assertion of executive privilege.

(13) President George W. Bush has asserted executive privilege in refusing even to turn over correspondence between non-Executive Branch officials and White House officials concerning the firings of at least 9 United States Attorneys, even though such communications could not reasonably be classified as falling within the privilege.

(14) President George W. Bush has directed at least two staff members, former and current, to ignore congressional subpoenas altogether, ordering former Counsel to the President Harriet Miers and current Deputy Chief of Staff and Senior Adviser to the President Karl Rove not to appear at Congressional oversight hearings based on the assertion that immediate presidential advisors are ''immune from compelled Congressional testimony about matters that arose during [their] tenure,'' rather than simply

instructing them to refrain from answering questions that might be covered by a proper assertion of executive privilege.

(15) President George W. Bush has refused to work to find a compromise with Congress or otherwise accommodate legitimate congressional oversight efforts, disregarding the proper relationship between the executive and legislative branches and demonstrating a belief that he and his Administration are above oversight and the rule of law.

(d) MISLEADING STATEMENTS ON THE USA PATRIOT ACT.—The Senate finds the following:

(1) President George W. Bush made misleading claims during the course of the Administration's 2005 campaign to reauthorize the USA PATRIOT Act of 2001, by suggesting that Federal officials did not have access to the same tools to investigate terrorism as they did to investigate other crimes.

(2) In 2005 the Federal Bureau of Investigation transmitted to Attorney General Alberto R. Gonzales multiple reports of violations of law in connection with provisions of the USA PATRIOT Act and related authorities, including unauthorized surveillance and improper collection of communications

data that were serious enough to require notification of the President's Intelligence Oversight Board.

(3) Despite these reports, Attorney General Alberto R. Gonzales told Congress and the American people in the course of the Administration's 2005 campaign to reauthorize the USA PATRIOT Act of 2001 that ''[t]he track record established over the past three years has demonstrated the effectiveness of the safeguards of civil liberties put in place when the Act was passed,'' that ''[t]here has not been one verified case of civil liberties abuse,'' and that ''no one has provided me with evidence that the Patriot Act is being abused or misused''.

(4) The United States Department of Justice sent a 10-page letter to Congress dated November 23, 2005—

(A) stating that a November 6, 2005, Washington Post story detailing the Federal Bureau of Investigation's use of National Security Letters was a ''materially misleading portrayal'' full of ''distortions and factual errors'';

(B) defending its use of National Security Letters by pointing to the Department's ''robust mechanisms for checking misuse,'' ''significant internal oversight and checks,'' and re-

ports to Congress regarding the number of National Security Letters issued; and

(C) stating that the November 6, 2005, Washington Post story was inaccurate in stating that ''The FBI now issues more than 30,000 National Security Letters a year, ... a hundredfold increase over historic norms.''.

(5) On March 9, 2007, the Inspector General for the United States Department of Justice issued a report on the Federal Bureau of Investigation's use of National Security Letters from 2003 through 2005—

(A) that the Inspector General said found ''widespread and serious misuse of the FBI's national security letter authorities'' that ''in many instances ... violated NSL statutes, Attorney General Guidelines, or the FBI's own internal policies,'' and found that ''the FBI did not provide adequate guidance, adequate controls, or adequate training on the use of these sensitive authorities''; and

(B) that indicated the Federal Bureau of Investigation issued approximately 39,000 National Security Letter requests in 2003, 56,000 National Security Letter requests in 2004, and

47,000 National Security Letter requests in 2005.

(6) The United States Department of Justice sent a letter on March 9, 2007, to Congress, admitting that it had ''determined that certain statements in our November 23, 2005 letter need clarification'' in light of the Inspector General's findings and that ''the reports [The Department of Justice] provided Congress in response to statutory reporting requirements did not accurately reflect the FBI's use of NSLs''.

(e) SIGNING STATEMENTS.—The Senate finds the following:

(1) President George W. Bush has lodged more than 800 challenges to duly enacted provisions of law by issuing signing statements that indicate that the President does not believe he must comply with such provisions of law.

(2) Such signing statements effectively assign to the executive branch alone the decision whether to fully comply with the laws that Congress has passed.

(3) On December 30, 2005, President George W. Bush signed the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influ-

enza Act, 2006, title X of which prohibits the Government from subjecting any individual ''in the custody or under the physical control of the United States Government, regardless of nationality or physical location'' to ''cruel, inhuman, or degrading treatment or punishment''.

(4) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply with the prohibition on torture and cruel, inhuman and degrading treatment, stating: ''The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks.''.

(5) On March 9, 2006, President George W. Bush signed the USA PATRIOT Improvement and Reauthorization Act of 2005, which requires that the executive branch furnish reports to Congress on certain surveillance activities.

(6) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply fully with these reporting requirements, stating: ''The executive branch shall construe the provisions of H.R. 3199 that call for furnishing information to entities outside the executive branch, such as sections 106A and 119, in a manner consistent with the President's constitutional authority to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.''.

(7) On December 20, 2006, President George W. Bush signed the Postal Accountability and Enhancement Act, which protects certain classes of sealed domestic mail from being opened except in specifically defined circumstances.

(8) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply with this provision, stating: ''The executive branch shall construe subsection 404(c) of title 39, as enacted by subsection 1010(e) of the Act, which provides for opening of an item of

a class of mail otherwise sealed against inspection, in a manner consistent, to the maximum extent permissible, with the need to conduct searches in exigent circumstances, such as to protect human life and safety against hazardous materials, and the need for physical searches specifically authorized by law for foreign intelligence collection.''

(9) The American Bar Association Task Force on Presidential Signing Statements and the Separation of Powers Doctrine concluded that President George W. Bush's misuse of signing statements ''weaken[s] our cherished system of checks and balances and separation of powers''.

SEC. 2. CENSURE BY THE SENATE.

The Senate censures George W. Bush, President of the United States, and Alberto R. Gonzales, Attorney General of the United States, and condemns their lengthy record of—

(1) undermining the rule of law and the separation of powers;

(2) disregarding statutes, treaties ratified by the United States, and the Constitution; and

(3) repeatedly misleading the American people.

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